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5

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,237	02/27/2002	Bernhard Lamich	655.01072	7787
7590	09/02/2004	EXAMINER		
WOOD, PHILLIPS, VAN SANTEN, CLARK & MORTIMER SUITE 3800 500 WEST MADISON STREET CHICAGO, IL 60661			LEO, LEONARD R	
			ART UNIT	PAPER NUMBER
				3753

DATE MAILED: 09/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/086,237	LAMICH, BERNHARD
Examiner	Art Unit	
Leonard R. Leo	3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 July 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2,6 and 7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 6 and 7 is/are allowed.
- 6) Claim(s) 2 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                           | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)       | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) Z . | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

The amendment filed on July 19, 2004 has been entered. Claims 1, 3-5 and 8-10 are cancelled, and claims 2 and 6-7 are pending.

The indicated allowability of claim 2 is withdrawn in view of the reference(s) to Baumann et al. Rejections based on the reference(s) follow.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kato et al in view of Baumann et al.

Kato et al discloses all the claimed limitations except the long sides being approximately half the distance between tube openings.

Baumann et al discloses a heat exchanger (Figure 4) comprising a header plate 3 having a plurality of openings receiving a plurality of flat tubes 4; wherein the tubes are closely spaced such that long edges 14 are approximately half the distance between tube openings for the purpose of providing strength.

Since Kato et al and Baumann et al are both from the same field of endeavor and/or analogous art, the purpose disclosed by Baumann et al would have been recognized in the pertinent art of Kato et al.

Art Unit: 3753

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Kato et al closely spaced tubes such that long edges are approximately half the distance between tube openings for the purpose of providing strength as recognized by Baumann et al.

The recitation of "cut" is read as an interface where two portions of an element are separated by any manufacturing step.

***Allowable Subject Matter***

Claims 6-7 are allowed.

***Response to Arguments***

Upon further review, claim 2 similar to cancelled claim 1 is met by the combination of Kato et al and Baumann et al. Baumann et al (Figure 4) discloses the long sides of the tubes are approximately half the distance between tube openings.

Lastly, the following title is suggested: Heat Exchanger Construction.

***Conclusion***

Any inquiry concerning this Office action should be directed to Leonard R. Leo whose telephone number is (703) 308-2611. Status of the application may be obtained from the Internet: <http://portal.uspto.gov/external/portal/pair>

*Leonard R. Leo*  
LEONARD R. LEO  
PRIMARY EXAMINER  
ART UNIT 3753

August 31, 2004